

DAC #3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**



Applicants: Agee et al.

Examiner: Unassigned

Application No.: 09/920,903

Art Unit: 2631

Filed: August 3, 2001

For: HIGHLY BANDWIDTH EFFICIENT COMMUNICATIONS

**PETITION UNDER 37 CFR § 1.181 REQUESTING  
ACCEPTANCE OF REPLACEMENT PAGES OF THE SPECIFICATION AND THAT  
THE APPLICATION BE ACCORDED A FILING DATE OF AUGUST 3, 2001**

01/08/2002 AKELLEY 00000005 134503 09920903

Commissioner of Patents  
Washington, D.C. 20231

01 FC:101 740.00 CH  
02 FC:105 130.00 CH  
03 FC:103 2484.00 CH  
04 FC:102 1680.00 CH

Receipt date: 01/08/2002 AKELLEY  
(08/2001) AWDHAF1 00000020 134503 09920903  
01 FC:122 SIR: 130.00 CH

Applicants hereby request, pursuant to 37 CFR 1.181, that the Commissioner (1) accept the attached copies of specification pages 26-37, the originals having been filed with the original application papers on August 3, 2001, as replacements for the now misplaced original specification pages 26-37, and (2) that the above-captioned application be accorded a filing date of August 3, 2001. On the basis that the present petition has been filed under 37 CFR 1.181, no petition fee is required.

On August 3, 2001, Applicants filed application papers with the United States Patent and Trademark Office (USPTO). Upon receipt, the USPTO, receipt date stamped (August 3, 2001) and returned to Applicants the properly itemized postcard receipt that accompanied the application papers. A copy of the date stamped postcard receipt is attached hereto. A review of the copy of the date stamped postcard receipt reveals that the application papers received by the USPTO included, inter alia, "181 pp Specification," which is inclusive of the now misplaced specification pages 26-37. As noted above, copies of the originally filed and now misplaced specification pages 26-37 are attached to the present Petition.

**RECEIVED**

OCT 25 2001

OFFICE OF PETITIONS

On September 27, 2001, the USPTO mailed a NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION. The Notice set a two-month time period, expiring on November 27, 2001, for response thereto. The present Petition and attached documents have been timely filed, i.e., prior to the November 27, 2001 deadline date.

Pursuant to Section 503 of the Manual of Patent Examining Procedure (MPEP) “[a] postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt of the items listed thereon by the PTO.” As discussed above, the postcard receipt itemized and properly identified each of the items being filed on August 3, 2001, including the originally filed and now misplaced specification pages 26-37. As such, the date stamped postcard receipt rises to the level of *prima facie* evidence of receipt by the USPTO of each item listed thereon, including originally filed specification pages 26-37.

The filing date of a nonprovisional application for patent, pursuant to 37 CFR § 1.53(b), is the date on which (1) a specification as prescribed by 35 U.S.C. § 112 containing a description pursuant to 37 CFR § 1.71, (2) at least one claim pursuant to 37 CFR § 1.75, and (3) any drawing required by 37 CFR § 1.81(a) are filed in the Patent and Trademark Office. Contrary to the Notice mailed September 27, 2001, the evidence submitted is sufficient to establish that the filing date requirements set forth under 37 CFR 1.53(b) were satisfied on August 3, 2001. That is, on August 3, 2001, the USPTO received, *inter alia*, 181 pages of specification, 73 pages of claims, 1 page Abstract, 124 sheets of formal drawings (FIGS. 1 – E2B), and 116 sheets substitute formal drawings (Figs. 1-106). Furthermore, the USPTO also received 14 pages of Declaration. As such, the requirements for a filing date under 37 CFR § 1.53(b) were satisfied on August 3, 2001.

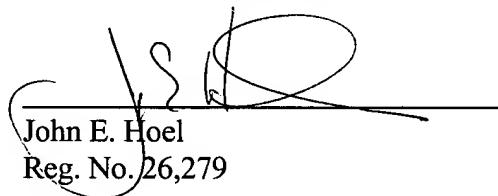
On the basis of the evidence filed herewith and discussed above, Applicants request that the USPTO (1) accept the attached copies of the original specification pages 26-37 as

replacement for the now misplaced original specification pages 26-37 filed as a part of the application papers on August 3, 2001, and (2) that the present application be accorded a filing date of August 3, 2001, pursuant to 37 CFR 1.53(b).

The Commissioner is hereby authorized to charge the Petition fee of \$130.00 which may be required as a result of this paper, or credit any overpayment to Deposit Account No. 13-4503, Order No. 4271-4036US3. A duplicate copy of this authorization is attached.

Respectfully submitted,

MORGAN & FINNEGAN LLP



John E. Hoel  
Reg. No. 26,279

Dated: 10/24/01

SENDER'S ADDRESS:  
MORGAN & FINNEGAN  
345 Park Avenue  
New York, New York 10154  
Tel: (202) 857-7887  
Fax: (202) 857-7929

RECEIVED

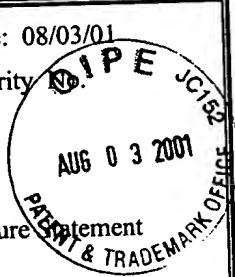
OCT 25 2001

OFFICE OF PETITIONS

## NEW U.S. PATENT APPLICATION

The Patent office date stamp heron acknowledges receipt of the below-identified documents:

|  |  |  |
|--|--|--|
| Atty: JEH/at   | Atty Docket No.: 4271-4036US3  | Date: 08/03/01                                   |
| Client Ref: STG 100 D00  | Priority Date:   | Priority <input checked="" type="checkbox"/> NO. |
| Applicant(s): Agee et al.  | Continuation Application   |  |
| Title: HIGHLY BANDWIDTH EFFICIENT COMMUNICATIONS   |  |  |
| 181 pp specification<br>73 pp. claims (1 - 265)<br>1 pp. Abstract<br>124 sheets Drawings (FIGS. 1 – E2B)<br>14 pp. Copy Declaration<br>pp. Assignment<br><input checked="" type="checkbox"/> New Application Transmittal | <input checked="" type="checkbox"/> Information Disclosure Statement<br><input checked="" type="checkbox"/> PTO-Form 1449<br><input type="checkbox"/> Cited References ( )<br><input checked="" type="checkbox"/> Preliminary Amendment<br><input checked="" type="checkbox"/> Deposit Account Authorization<br><input checked="" type="checkbox"/> Submission of Substitute Drawings<br><input checked="" type="checkbox"/> 116 Sheets Substitute Formal Drawings<br>(Figs. 1 to 106) |  |



AUG 03 2001

OCT 24 2001

JC152

RECEIVED

OCT 25 2001

OFFICE OF PETITIONS

Docket No. 4271-4036US3  
Express Mail No.

†AFFIX CUSTOMER NO. LABEL ABOVE †



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
UTILITY APPLICATION AND FEE TRANSMITTAL (1.53(b))

COMMISSIONER FOR PATENTS  
BOX PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing is the patent application of

Inventor(s) names and addresses:

|                                 |                                |
|---------------------------------|--------------------------------|
| (1) Brian G. Agee               | (8) Mary Jesse                 |
| San Jose, California 95125      | Issaquah, Washington 98029     |
| (2) Matthew Bromberg            | (9) Robert Lee Maxwell         |
| San Jose, California 95123      | Duvall, Washington 98019       |
| (3) Derek Gerlach               | (10) Robert G. Mechaley, Jr.   |
| Mountain View, California 94040 | Lexington, Massachusetts 02173 |
| (4) David Gibbons               | (11) Robert Ray Naish          |
| Redmond, Washington 98053       | San Jose, CA 95128             |
| (5) James Timothy Golden        | (12) David J. Nix              |
| Carnation, Washington 98014     | Issaquah, Washington 98029     |
| (6) Minnie Ho                   | (13) David James Ryan          |
| Palo Alto, California 94043     | Seattle, Washington 98103      |
| (7) Elliott Hoole               | (14) David Stephenson          |
| Redmond, Washington 98053       | San Jose, CA 95129             |

For: HIGHLY BANDWIDTH EFFICIENT COMMUNICATIONS

Enclosed Are:

181 page(s) of specification  
1 page(s) of Abstract  
73 page(s) of claims  
124 sheets of  Formal  Informal drawings  
  
14 page(s) of Declaration and Power of Attorney

Unsigned  
 Newly Executed  
 Copy from prior application  
 Deletion of inventors including Signed Statement under 37 C.F.R. §1.63(d)(2)

REQUEST AND CERTIFICATION UNDER 35 U.S.C. §122(b)(2)(B)(i) (form PTO/SB/35)

As indicated on the attached Request and Certification, Applicant(s) certify that the invention disclosed in the attached application HAS NOT and WILL NOT be the subject of

an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. Applicant(s) therefore request(s) that the attached application NOT be published under 35 U.S.C. §122(b).



Incorporation by Reference:

The entire disclosure of the prior application, from which a copy of the combined Declaration and Power of Attorney is supplied herein, is considered as being part of the disclosure of the accompanying application and is incorporated herein by reference.



Deletion of Inventors (37 C.F.R. §1.63(d) and §1.33(b))

Signed statement attached deleting inventor(s) named in the prior application serial no. \_\_\_\_\_, filed \_\_\_\_\_.



Microfiche Computer Program (Appendix)

page(s) of Sequence Listing

computer readable disk containing Sequence Listing

Statement under 37 C.F.R. §1.821(f) that computer and paper copies of the Sequence Listing are the same



Assignment Papers (assignment cover sheet and assignment documents)

A check in the amount of \$40.00 for recording the Assignment

Charge the Assignment Recordation Fee to Deposit Account No. \_\_\_\_\_, Order No. \_\_\_\_\_

Assignment Papers filed in the parent application Serial No. 08/993,721



Certification of chain of title pursuant to 37 C.F.R. §3.73(b)



Priority is claimed under 35 U.S.C. §119 for:

Application No(s). \_\_\_\_\_, filed \_\_\_\_\_, in \_\_\_\_\_ (country).

Certified Copy of Priority Document(s) [ \_\_\_\_\_ ]

filed herewith

filed in application Serial No. \_\_\_\_\_ filed \_\_\_\_\_.

English translation document(s) [ \_\_\_\_\_ ]

filed herewith

filed in application Serial No. \_\_\_\_\_ filed \_\_\_\_\_.



Priority is claimed under 35 U.S.C. §119(e) for:

Provisional Application No. \_\_\_\_\_, filed \_\_\_\_\_.



Information Disclosure Statement

Copy of [ \_\_\_\_\_ ] cited references

PTO Form-1449

References cited in parent application Serial No. 08/993,721, filed 12/18/97.



Related Case Statement under 37 C.F.R. §1.98(a)(2)(iii)

A copy of related pending U.S. Application(s) Serial No(s): \_\_\_\_\_, filed \_\_\_\_\_, respectively, is attached hereto.

A copy of related pending U.S. Application(s) entitled, \_\_\_\_\_, filed \_\_\_\_\_ to inventor(s) \_\_\_\_\_, respectively, is attached hereto.

A copy of each related application(s) was submitted in parent application serial no. filed

Preliminary Amendment

Return receipt postcard (MPEP 503)

This is a  continuation  divisional  continuation-in-part of prior application serial no. 08/993,721, filed December 18, 1997, which is a continuation of application serial no. 08/804,619, filed February 24, 1997, (now abandoned) to which priority under 35 U.S.C. §120 is claimed.

Cancel in this application original claims 1-10, 61-70, 113-122 and 157-233 of the parent application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)

A Preliminary Amendment is enclosed. (Claims added by this Amendment have been properly numbered consecutively beginning with the number following the highest numbered original claim in the prior application).

The status of the parent application is as follows:

A Petition for Extension of Time and a Fee therefor has been or is being filed in the parent application to extend the term for action in the parent application until \_\_\_\_\_.  
 A copy of the Petition for Extension of Time in the co-pending parent application is attached.  
 No Petition for Extension of Time and Fee therefor are necessary in the co-pending parent application.

Please abandon the parent application at a time while the parent application is pending or at a time when the petition for extension of time in that application is granted and while this application is pending has been granted a filing date, so as to make this application co-pending.

Transfer the drawing(s) from the parent application to this application

Amend the specification by inserting before the first line the sentence:  
This is a continuation of co-pending application Serial No. 08/993,721, filed December 18, 1997.

| I. CALCULATION OF APPLICATION FEE                  |              |   |                 |                              |
|--|--------------|---|-----------------|------------------------------|
|  | Number Filed | Number Extra                              | Rate            | Basic Fee<br>\$710.00/355.00 |
| Total Claims                                       | 158- 20 =    | 138x                                      | \$18.00/\$9.00  | \$ 2484.00                   |
| Independent Claims                                 | 24- 3 =      | 21x                                       | \$80.00/\$40.00 | \$ 1680.00                   |
| <input type="checkbox"/> Multiple Dependent Claims |              | If marked, add fee of \$270.00 (\$135.00) |                 | \$ 0.00                      |
|  |              |   |                 | TOTAL: \$ 4874.00            |

Small entity status is or has been claimed. Reduced fees under 37 C.F.R. §1.9 (f) paid herewith \$\_\_\_\_\_.

- A check in the amount of \$ \_\_\_\_ in payment of the application filing fees is attached.
- Charge fee to Deposit Account No. \_\_\_\_ Order No. \_\_\_\_\_. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.
- The Commissioner is hereby authorized to charge any additional fees which may be required for filing this application pursuant to 37 CFR §1.16, including all extension of time fees pursuant to 37 C.F.R. § 1.17 for maintaining copendency with the parent application, or credit any overpayment to Deposit Account No. \_\_\_\_ Order No. \_\_\_\_\_. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: Aug 3, 2001

By:



Michael S. Marcus  
Registration No. 31,727  
(202) 857-7887 Telephone  
(202) 857-7929 Facsimile

CORRESPONDENCE ADDRESS:

MORGAN & FINNEGAN, L.L.P.  
345 Park Avenue  
New York, NY 10154

RECEIVED

OCT 25 2001

OFFICE OF PETITIONS



**UNITED STATES PATENT AND TRADEMARK OFFICE**

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NUMBER | FILING/RECEIPT DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NUMBER |
|--------------------|---------------------|-----------------------|------------------------|
| 09/920,903         | 08/03/2001          | Brian G. Agee         | 4271-4036US3           |

O I P E SC182  
OCT 24 2001  
PARENT & TRADEMARKS  
MORGAN & FINNEGAN, L.L.P.  
245 Park Avenue  
New York, NY 10154

**CONFIRMATION NO. 8061**  
**FORMALITIES LETTER**



OC000000006801687

Date Mailed: 09/27/2001

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(b)**

***Filing Date Granted***

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 710 to complete the basic filing fee for a non-small entity. If appropriate, applicant may make a written assertion of entitlement to small entity status and pay the small entity filing fee (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$4084.
  - \$2484 for 138 total claims over 20.
  - \$1600 for 20 independent claims over 3 .
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 4924.**

**RECEIVED**

The following item(s) appear to have been omitted from the application:

OCT 25 2001

- Page(s) 26-37 of the specification (description and claims).

**OFFICE OF PETITIONS**

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit must be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date must be filed within **TWO MONTHS** of the date of this Notice.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabelled drawing figures, is required. Any drawing changes should be accompanied by a copy of the drawing figures showing the proposed changes in red ink. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

---

*A copy of this notice **MUST** be returned with the reply.*

*MM*

---

Customer Service Center  
Initial Patent Examination Division (703) 308-1202  
PART 1 - ATTORNEY/APPLICANT COPY

CASE 4271-4036 US3 ATTY JFH  
DUE DATE November 27 2001  
STATUTORY DATE April 27 2002  
BY J.M.  
*[Handwritten signature over the typed information]*